UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAHRA KERMAN-MASTOUR Plaintiff, v. FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., AND FINRA REGULATION, INC., Defendants.	Docket No.: 10-CV-1633 (RJH)(RLE) **DECLARATION OF RICHARD CHIN**

I, **RICHARD CHIN, ESQ.**, being duly sworn, declare under penalty of perjury that the foregoing is true and correct:

1. I am currently employed as a Director in the Enforcement department of the Financial Industry Regulatory Authority, Inc., ("FINRA"), reporting to Susan Light ("Light"), the Senior Vice-President and Chief Counsel of the Enforcement department of FINRA. I have held this position since I joined FINRA in July 2007. Prior to joining FINRA, I held the position of Director at New York Stock Exchange ("NYSE") Regulation. I am fully familiar with the facts set forth in this declaration, which I offer in support of Defendants' Motion for Summary Judgment and to supplement my deposition testimony.

2. I began supervising plaintiff, Tahra Kerman-Mastour, in around May of 2005. She had previously reported to Light.

3. When I first started supervising Kerman-Mastour in 2005, I reviewed her cases to familiarize myself with her work. I immediately noticed that her cases were relatively basic for her years of experience. I understood that she had been working as an enforcement attorney

since 2001. I therefore asked Kerman-Mastour if she wanted to work on cases that were more complex and more appropriate given her years of experience as an enforcement attorney. She responded that she did not because she would be leaving for maternity leave soon.

4. On or about July 2007, I began my employment at FINRA, which at that time was a new corporation, registered with the Securities and Exchange Commission ("SEC"), and formed by the consolidation of National Association of Securities Dealers ("NASD") and the member firm regulation and enforcement divisions of NYSE Regulation.

5. Kerman-Mastour was on a maternity leave during the consolidation of NASD and the member firm regulation and enforcement divisions of NYSE Regulation. When she returned, on February 29, 2008, she continued to report to me.

6. During my supervision of Kerman-Mastour, I never purposely invited her to lunch at a non-Kosher establishment, and I never made any discriminatory comments to her. Contrarily, I invited her to lunch on one occasion at a Kosher-friendly establishment, and on another occasion, I ordered lunch from a Kosher establishment for Kerman-Mastour and the other members of my unit.

7. As Kerman-Mastour's supervisor, I quickly discovered deficiencies in Kerman-Mastour's work product. She often submitted memoranda that omitted relevant facts and arrived at incorrect legal conclusions. In addition, she did not make progress on her cases for months at a time, notwithstanding the fact that, as set forth below, she carried a very light caseload compared to her peers. For example, Kerman-Mastour's comments in STAR, FINRA's case management and time reporting system, for the GP and LT cases were similar for June, July, August, and September of 2008, indicating that she had not made any progress in these matters.

Kerman-Mastour's Work in the GP Matter

8. Kerman-Mastour was not productive and did not adequately perform in the GP case. FINRA opened this case on April 10, 2008, and assigned it to Kerman-Mastour to investigate. GP was a registered representative who was alleged to have engaged in unauthorized trading in a customer's account and exercised discretionary trading authority in numerous other customer accounts without obtaining prior authorization from the customers.

9. I met with Kerman-Mastour on April 14, 2008 to discuss the case.

10. On May 2, 2008, I again met with Kerman-Mastour, and created a "to do" list to assist her in investigating the matter. I instructed Kerman-Mastour to draft a document request to the firm and to contact the customers who had not complained about GP's conduct, after preparing a short non-complaining customer memorandum.

11. On May 16, 2008, I met with Kerman-Mastour, who indicated that no work was done on the case despite the fact that at that time, she had only been carrying six very basic cases. The typical caseload for attorneys with Kerman-Mastour's experience is significantly higher. I again instructed Kerman-Mastour to work on completing the "to do" list

12. On May 23, 2008, I met with Kerman-Mastour, who again indicated that no work was done on the GP matter. Kerman-Mastour promised to make progress on this case by our next meeting.

13. On July 2, 2008, Kerman-Mastour and I met with Light to discuss Kerman-Mastour's cases. Kerman-Mastour again indicated that no work was done on the matter. We informed Kerman-Mastour that her failure to make progress on the GP matter and the LT case for several months was unacceptable. We directed her to work on these cases.

14. On July 29, 2008, I met with Kerman-Mastour who again indicated that she did not work on this matter. I told Kerman-Mastour that this was unacceptable and reminded her of

the issues that were identified in her 2007 performance evaluation regarding her failure to make adequate progress on her investigations.

15. On September 23, 2008, and again on October 23, 2008, I met with Kerman-Mastour, who indicated no progress was made on the GP matter.

16. On October 28, 2008, over five months after I directed her to do so, Kerman-Mastour finally prepared a one-page memorandum to contact the non-cooperating customers in GP..

17. In October 2008, Light and I, after discussing with Chris Snyder ("Snyder"), Associate Director of FINRA's Human Resources Department, and Susan Murdoch ("Murdoch"), FINRA's Administrative Chief of Enforcement, decided to place Kerman-Mastour on a performance improvement plan ("PIP"). On October 29, 2008, Light and I met with Kerman-Mastour and informed her that she was being placed on the PIP due to her poor performance. Kerman-Mastour's deficient performance was discussed in detail with her.

18. Light and I, along with Snyder and Murdoch, finalized the written PIP in early November, and provided it to Kerman-Mastour on November 6, 2008. The PIP required, among other things, that she make significant progress on all her investigations; conduct precedent research at the initiation of and throughout the investigation to achieve a better understanding of the issues involved; make knowledgeable recommendations of formal versus informal action and recommend an appropriate range of penalties; produce documents that were well written and organized and contained no factual or typographical errors, and did not omit any factual, legal or sanction analysis.

19. On November 13 and November 21, 2008, I met with Kerman-Mastour and again provided her with guidance on how to conduct the investigation. At this time, she reported some progress on the GP case.

20. Between November 28, 2008, and January 27, 2009, I met with Kerman-Mastour on five occasions to obtain updates on the progress of the case. Finally, on February 2, 2009, Kerman-Mastour took GP's on-the-record testimony. Josefina Martinez ("Martinez"), another staff attorney who reports to me, attended the morning session of GP's on-the-record testimony. Martinez later informed me that there were deficiencies in the manner in which Kerman-Mastour took the testimony of GP.

21. On February 5, 2009, Kerman-Mastour was placed on an extended PIP. This second PIP had similar conditions as those contained in the initial PIP. Among other things, the second PIP required that Kerman-Mastour submit the GP memorandum to Susan Light for final approval by no later than February 27, 2009. As described in more detail below, Kerman-Mastour did not meet the requirements of the second PIP.

22. On February 10, 2009, I met with Kerman-Mastour and discussed her on-the record testimony of GP. Kerman-Mastour indicated that GP only admitted to entering two unauthorized trades in a customer's account, not the fourteen unauthorized trades that his firm found he engaged in. I asked Kerman-Mastour if she had confronted GP with the firm's documentary support that he had engaged in fourteen unauthorized trades. Kerman-Mastour indicated that she only had the firm's warning letter issued to GP. Kerman-Mastour was instructed to contact the firm and request their documentary proof for concluding that GP had engaged in fourteen unauthorized trades in the customer's account. I also directed Kerman-Mastour to request that GP produce a notebook which GP testified contained his documentation

of his contact with customers. This notebook was later used to establish the discretionary trading violations. The firm subsequently provided a written statement signed by GP admitting that he engaged in fourteen unauthorized trades in the customer's account.

23. On March 2, 2009, Kerman-Mastour submitted the Sufficiency of Evidence ("SOE") memorandum on this matter, which is dated February 27, 2009. On March 16, 2009, Light and I met with Kerman-Mastour to discuss the issues and deficiencies in her SOE memorandum.[1] We provided Kerman-Mastour with our revisions to the SOE memorandum.

24. On March 20, 2009, I met with Kerman-Mastour, who indicated that she had not yet incorporated the revisions to her SOE. A month later, on April 20, 2009, I again met with Kerman-Mastour. She once more informed me that she had not made any revisions to the SOE.

25. On May 6, 2009, following Kerman-Mastour's termination, I reassigned the case to Martinez, whom I trusted would be able to complete the case. I have, in the past, asked Martinez, to attend Plaintiff's on-the-record interviews and provide her with guidance. Martinez sent out several additional document requests to the firm to obtain necessary information that Kerman-Mastour had not sought. Among other things, Martinez requested the firm's relevant policies and procedures for the misconduct period, whereas Kerman-Mastour's prior request for the firm's policies and procedures did not specify a time period, causing the firm to provide only the policies and procedures in effect at the time of Kerman-Mastour's request. Notably, Kerman-Mastour had been previously advised of the importance of specifying a time period for all of her document requests.

---

[1] Examples of some of the deficiencies in Kerman-Mastour's memorandum are summarized in the chart attached on page 14 of this Declaration.

Kerman-Mastour's Work in the LT Matter

26. Similarly, Kerman-Mastour severely underperformed on the LT matter. LT was a producing branch office manager who solicited thirteen customers to purchase shares in American Home Mortgage Investment Corporation ("AHM"). Shortly after the customers made their purchases, AHM filed for bankruptcy and these customers sustained losses as a result. LT was alleged to have deposited ten certified bank checks and attempted to deposit an additional six bank checks in a total of thirteen customer accounts in order to reimburse these customers for a portion of their losses sustained in connection with their investments in AHM. The total value of the checks LT deposited or attempted to deposit was approximately $12,200.

27. On April 24, 2008, FINRA opened the LT matter, and I assigned it to Kerman-Mastour.

28. On May 2, 2008, I met with Kerman-Mastour and created a "to do" list to assist her in investigating the matter. I instructed her to, among other things, draft document requests to the firm, contact customers after preparing a short non-complaining customer memorandum, compare the losses in the customer accounts with the amounts that LT gave to the customers, obtain copies of the certified bank checks that LT used to reimburse customers, and obtain LT's account statements to establish the source of the funds he used to reimburse the customers.

29. On May 16, 2008, I met with Kerman-Mastour, who indicated that no work was done on the case, despite the fact that she carried only six very basic cases. Kerman-Mastour was instructed to complete the items on the "to do" list.

30. On May 23, 2008, I again met with Kerman-Mastour, who indicated that she did not work on this matter. Kerman-Mastour promised to make progress on this case by the following week.

31. On July 2, 2008, Light and I met with Kerman-Mastour, who indicated that she had not done any work on the matter. We informed Kerman-Mastour that her failure to make progress on this matter and theGP case for several months was unacceptable, and directed her to work on these cases.

32. On July 29, 2008, I met with Kerman-Mastour who again indicated that she did not work on this matter. I told Kerman-Mastour that this was unacceptable and reminded her of the issues that were identified in her 2007 performance evaluation regarding her failure to make progress on her investigations.

33. On August 1, 2008, Light and I met with Kerman-Mastour to discuss Kerman-Mastour's one page memorandum requesting permission to contact non-complaining customers. Light provided Kerman-Mastour with edits and instructed Kerman-Mastour to finalize the memorandum and contact the non-complaining customers.

34. On September 23, 2008, I met with Kerman-Mastour, who indicated that she had not contacted the non-complaining customers and had not made any progress on the matter.

35. On October 23, 2008, I met with Kerman-Mastour, and she again informed me that she had not made any progress on the case.

36. On October 28, 2008, Kerman-Mastour finally contacted the non-complaining customers via letter.

37. In October 2008, Light and I, after discussing with Snyder and Murdoch, decided to place Kerman-Mastour on a performance improvement plan ("PIP"). On October 29, 2008, Light and I met with Kerman-Mastour and informed her that she was being placed on the PIP due to her poor performance. Kerman-Mastour's deficient performance was discussed in detail with her.

38. Light and I, along with Snyder and Murdoch, finalized the written PIP in early November, and provided it to Kerman-Mastour on November 6, 2008. Among other things, the PIP informed Kerman-Mastour that she had to submit a final memorandum on the LT matter to Light for final approval by no later than January 7, 2009. As described in more detail below, Kerman-Mastour did not meet this deadline.

39. On November 13 and November 21, 2008, I met with Kerman-Mastour and again provided her with guidance on how to conduct the investigation. On both occasions, she indicated that she had made some progress on the case.

40. On December 4, 2008, Kerman-Mastour took LT's on-the-record testimony.

41. On December 9, 2008, Kerman-Mastour informed me that she was ready to write a memorandum on the case. I instructed her to review precedent and the NASD Sanction Guidelines to determine whether formal or informal action was warranted. I had previously reminded her that when determining an appropriate sanction, she should apply NASD precedent and turn to NYSE precedent only if there was no applicable NASD precedent.

42. On December 18, 2008, I met with Kerman-Mastour, who recommended informal action and closing the case with a Letter of Caution, which is a cautionary letter warning the respondent not to engage in similar misconduct in the future. I informed Kerman-Mastour that I believed that formal action was warranted based on my quick review of NASD precedent.

43. On January 6, 2009, I met with Kerman-Mastour, who had submitted a closing memorandum recommending the issuance of a Letter of Caution. This memorandum omitted

significant facts that were necessary to assess the matter appropriately.[2] The closing memorandum was given to Light for review.

44. On January 27, 2009, I met with Kerman-Mastour to discuss her closing memorandum and told her that I still believed formal action was warranted in this matter but that Susan Light would make the final decision.

45. On February 5, 2009, Kerman-Mastour received her extended PIP, which extended further her time to submit a memorandum in this matter to Light for final approval to February 13, 2009. Kerman-Mastour once again failed to meet these requirements.

46. On February 13, 2009, Kerman-Mastour submitted a second draft of the closing memorandum which omitted significant facts necessary to evaluate the case. Subsequently, senior management determined formal action was warranted against LT and Kerman-Mastour was instructed to draft a SOE memorandum.

47. On February 17, 2009, I met with Kerman-Mastour after reviewing the second draft of the closing memorandum. According to her memorandum, LT admitted his misconduct to the firm. When I questioned Kerman-Mastour about this, she could not identify the person or persons to whom LT admitted his conduct. She was also unaware of how the firm became aware of LT's misconduct. After contacting the firm at my request, it was determined that LT's branch office cashier, Jane Doe reported his misconduct to firm supervisors, and that LT admitted his misconduct to his regional manager, John Doe. Kerman-Mastour had never interviewed either of these individuals, despite being assigned to the case in April 2008. Kerman-Mastour was instructed to schedule informal interviews with both of these individuals.

---

[2] Examples of some of the deficiencies in Kerman-Mastour's memorandum are summarized in the chart attached on page 16 of this Declaration.

48. On February 23, 2009, Kerman-Mastour and I interviewed Jane Doe and John Doe. During the interviews, Kerman-Mastour did not take any notes and failed to ask questions that established that LT made misrepresentations and attempted to conceal his misconduct from the firm. Jane Doe indicated that she became suspicious of LT when he submitted several checks for deposit into various customers' accounts simultaneously. Jane Doe stated that LT had misrepresented that the customers had given him cash for deposit into their accounts. LT claimed that he used the cash to purchase the certified checks from a bank since the firm did not accept cash deposits. This differed from LT's testimony that he withdrew the funds from his personal bank account to purchase the certified checks.

49. On March 4, 2009, I instructed Kerman-Mastour to include in STAR the informal interviews that we conducted on February 23, 2009, because her prior entry did not reflect that we had conducted these informal interviews.

50. On March 9, 2009, Kerman-Mastour submitted a draft SOE memorandum to Light, which failed to include the information received during the informal interviews conducted on February 23, 2009. Light returned this memorandum to Kerman-Mastour with her edits.

51. On March 20, 2009, I met with Kerman-Mastour and asked her to incorporate the appropriate edits.

52. On April 20, 2009, I met with Kerman-Mastour who indicated that no progress was made on the revisions to her SOE. Kerman-Mastour was again instructed to make the appropriate revisions to the memorandum.

53. On April 23, 2009, I met with Kerman-Mastour, who again informed me that no revisions were made to the SOE. Kerman-Mastour was again instructed to make revisions to the memorandum.

54. In May 2009, I also reassigned this case to Josefina Martinez, who corrected the factual inaccuracies and inadequate legal conclusions in Kerman-Mastour's draft.

Kerman-Mastour's Work in the TB Matter

55. On November 10, 2008, after Kerman-Mastour had been placed on her PIP, I assigned a statutory disqualification case, in the matter of TB, to her. TB was employed as a non-registered technician in the operations department of a FINRA regulated broker-dealer and failed to disclose a criminal arrest and conviction for Attempted Grand Larceny to the firm. Given her conviction, TB was subject to a statutory disqualification and could not be employed by her firm. These statutory disqualification cases are quite basic, require minimal investigation, and are typically assigned to first year attorneys, interns, and paralegals to complete. Once the relevant documents (certificate of conviction and firm documents) are obtained in these cases, the appropriate memorandum can typically be completed in a day. Light and I assigned this case to Kerman-Mastour because we believed that it was an easy case for her to complete in a timely manner, and we wanted to help her show that she can meet deadlines.

56. On November 13, 2008, I met with Kerman-Mastour and created a "to do" list to assist her in investigating the matter. Kerman-Mastour was instructed, among other things, to draft document requests to the firm and obtain a certificate of conviction.

57. On November 21, 2008, Kerman-Mastour informed me that she had received the firm documents and certificate of conviction. Thereafter, on November 28, 2008, I met with Kerman-Mastour and instructed her to determine if TB was an associated person over whom FINRA had jurisdiction. Additionally, I instructed Kerman-Mastour to review TB's annual compliance certifications to the firm to determine whether she made any misstatements.

13073996v.1

58. On December 9, 2008, I met with Kerman-Mastour and received an update on the progress of case. She informed me that she had not made a determination as to TB's associated person status.

59. On December 18, 2008, Kerman-Mastour informed me that she still had not determined whether TB was an associated person.

60. On January 6, 2009, I met with Kerman-Mastour, who indicated that she was ready to draft her memorandum.

61. However, on January 27, 2009, Kerman-Mastour had not yet drafted the memorandum.

62. On February 10, 2009, after already having been placed on the extended PIP, Kerman-Mastour still had not made any progress on this case.

63. I met with Kerman-Mastour again on February 18, February 25, March 6, March 12, and March 20. Each time, she informed me that she had not made any progress on this case.

64. On March 31, 2009, Kerman-Mastour finally submitted her first draft of the memorandum. The matter was subsequently reassigned to Brian Vincent.

65. Kerman-Mastour's lack of progress on this matter for over two months clearly demonstrated that she failed to meet the conditions of her PIP.

66. The following charts, which I prepared for this Declaration, summarize Kerman-Mastour errors in her drafts in the TP and LT matters. The chart also compares Kerman-Mastour's drafts to the final memoranda.

SOE-TP DRAFTED BY KERMAN-MASTOUR	FINAL SOE- TP COMPLETED BY JOSEFINA MARTINEZ
ISSUES • Repetitive • Factual Inaccuracies • Inadequate Legal Analysis • Improper Conclusion	The final version of the memorandum corrected the deficiencies in Kerman-Mastour's prior memorandum.
FACTUAL INACCURACIES	**CORRECTED FACTS**
There were numerous factual inaccuracies in this document. The following are but a few of the examples: • Kerman-Mastour stated that the firm settled both customer Jane Doe's complaints for $2,664; • Kerman-Mastour indicated that customer ABC, Inc.. sold 300 shares of Petro China on 10/12/07, at $230.01 per share for a profit of $16,519.34; • Kerman-Mastour indicated that customer John Doe sold 75 shares of PetroChina on October 15, 2007 at $224.52 per share for a gain of $10,459.94; and • Kerman-Mastour indicated that an account was titled "JP" and that 500 shares of Petro China were sold from the account on 10/15/07 for a gain of $136,942.12.	• Final version of SOE corrected all the factual inaccuracies found in Kerman-Mastour's SOE. These factual inaccuracies were readily apparent from a review of the investigative files. • Two settlement documents - one for Jane Doe and another for Jane Doe were in the investigative file. Jane Doe settled her complaint with the firm for $2,664. Jane Doe complaint was settled for an additional $4,466.07. • The ABC, Inc. actually entered two sell orders for Petro China stock for 100 and 200 shares on 10/15/07 and 10/12/07, respectively. The 100-share sell order was executed on 10/15 at $230.01 per share for a gain of $16,519.34. The 200-share order was executed on 10/12/07 at price of $209.51 per share for an additional gain of $31,684.28. • John Doe actually entered a stop loss order on 10/3/07 for 1300 shares of PetroChina that was never executed. No sale of PetroChina shares occurred on 10/15/07 in the customer's account and therefore no gains were incurred. • The account was actually in name of GP and JP for the benefit of GP Charitable Remainder Trust. On 10/15/07, 1000 shares of Petro China not 500 shares were sold from the account for a gain of $136,942.12.
INADEQUATE LEGAL ANALYSIS	**LEGAL ANALYSIS**
• Kerman-Mastour only recommends charging GP with engaging in 13 unauthorized trades in customer NG's accounts • Kerman-Mastour failed to recommend any violations related to GP's entry of stop loss orders in 37 customers' account citing insufficient evidence. • Kerman-Mastour also failed to include that GP had several months earlier received a Letter of Caution from the firm for improperly engaging in discretionary trading authority in customers' accounts.	• Included a full discussion on the trading activity in NG's accounts • GPis charged with engaging in 18 unauthorized trades in NG's accounts based on the customer allegations; inconsistent statements made by GP; and GP's own written admission that he engaged in 14 unauthorized trades in NG's accounts • GP is charged with discretionary trading violations in 45 accounts of 37 customers when he entered stop loss orders in these accounts without obtaining prior authorization from the customers. There was ample evidence to establish these violations which

	included, GP's own admissions that he entered these orders without first obtaining the customers' authorizations; documentary evidence provided by GP that confirmed he did not speak to these customers prior to the entry of these orders ("GP's notebook"); and the accounts statements and trade confirmations that verified the entry of the stop loss orders. • GP's prior Letter of Caution issued by the firm for improperly engaging in discretionary trading in customer accounts several months earlier was included in this memorandum.
IMPROPER CONCLUSION	**CONCLUSION**
• Kerman-Mastour only recommended charging GP with engaging in unauthorized trading on 13 occasions in customer NG's accounts in violation of NASD Rule 2110 and IM 2310-2. Kerman-Mastour recommended a penalty of a suspension from 10-20 days and fine from $5,000 to $7,500.	• Violations of NASD Rule 2110 and IM -2310-2 – 18 instances of unauthorized trading found in NG's accounts. • Violations of NASD Rules 2510(b) and 2110- by exercising discretionary trading authority in 45 accounts held by 37 customers without the prior written authorization of the customers and his member firm employer • GP settled this matter with a penalty consisting of a 60 day suspension and a $15,000 fine